

# SHARP Monthly Reader

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## D.C. Circuit sets format for oral argument in suit over OSHA silica rule

A panel of the U.S. Court of Appeals for the District of Columbia Circuit has scheduled 90 minutes for oral argument next month in litigation challenging the Obama OSHA's landmark silica rule, allowing time for industry claims faulting the agency's assessment of silica's risks and the feasibility of the rule, as well as for labor concerns that the rule is not strict enough.

[In an Aug. 17 order](#), the court scheduled oral argument in the consolidated litigation, *North America's Building Trades Unions, v. OSHA* for September 26 at 9:00 am.

The order also declined a request from public health *amicus* parties to participate in the argument.

The order revises [a prior June order](#) that set arguments for the same day but did not set a format.

The Obama OSHA's March 25, 2016 silica rule, which set one standard for the construction sector and another for maritime and general industry, strengthened the permissible exposure limit for silica for the first time in decades in an effort to limit exposures

that are blamed for respiratory illnesses.

Industry groups challenged the silica rule, arguing that OSHA failed to show significant risk under the prior rule, that the new limit is not attainable, and that other provisions either fail to provide an alternative pathway to compliance or are unwieldy. Labor groups are also party to the complex litigation, seeking greater protections for certain workers.

In the recent order, the D.C. Circuit allotted one hour and 10 minutes for industry and OSHA to weigh industry's claims faulting OSHA's finding of significant risks from silica at levels under the prior rule, as well as the economic and technological feasibility of the rule.

The court has allotted 20 minutes for unions and OSHA to argue over issues raised by unions in the case.

Additionally, [the court denied an Aug. 14 request](#) to participate in oral arguments from the American Thoracic Society and the American College of Occupational and Environmental Medicine. The groups



are *amici curiae* in the case supporting OSHA.

The court's schedule for oral arguments is similar, though slightly shorter, than the parties [proposed Aug. 14 in a joint filing](#).

The Obama OSHA defended the silica rule on the eve of Trump's inauguration, arguing in a Jan. 19 federal court filing that the regulation is based on a large swath of evidence, and that the agency's scientific interpretation of that data is entitled to an "extreme degree of deference."

But Labor Secretary Alex Acosta [has repeatedly sidestepped calls from Senate Democrats](#) to promise to defend the silica rule, citing Trump's deregulatory orders, while also vowing strong enforcement of workplace safety.

## OSHA Announces Second Meeting on Strengthening VPP

OSHA announced Aug. 14 it will host a second public meeting, this time on Aug. 28, on the eve of **VPPPA's Safety+ annual conference**, to solicit suggestions for growing and strengthening Voluntary Protection Programs. The conference is taking place in New Orleans, mainly at the Ernest N. Morial Convention Center, and that's where OSHA's meeting will be.

It will include a review of the July 17, 2017, meeting and comments and suggestions from the public on potential avenues for action, according to the OSHA announcement, which explains that OSHA "is seeking to reshape VPP so that it continues to represent safety and health excellence, leverages partner resources, further recognizes the successes

of long-term participants, and supports smart program growth."

The agency wants stakeholders to provide new ideas on these three subjects:

- Overall VPP process and flow
- Corporate/long-term participant involvement
- Special Government Employee activities

[Full Article](#)

## State OSHA Fines Remain Lower Despite Years of Federal Pressure

Several years of pressure from federal OSHA to get states to increase their worker safety fines have met with little success. And the disparity between federal and state penalties isn't likely to change soon.

Of the 22 states enforcing their own workplace safety rules for private employers, only four have average fines that satisfy the federal goal, according to a Bloomberg BNA analysis of recently released data from the

Occupational Safety and Health Administration.

In fiscal 2016, the average federal OSHA fine for a serious violation was \$2,279. The unweighted state average for the same year was \$1,670, about \$600 below the federal average.

That means an employer under federal OSHA jurisdiction in Ohio, typically would face a proposed serious violation penalty of \$2,279 while a builder in neighboring

Michigan would be fined \$774, or in Indiana penalized \$1,074.

Kevin Beauregard, vice chairman of the Occupational Safety and Health State Plan Association, told Bloomberg BNA Aug. 8 that states continue to believe their effectiveness is best measured by the impact on worker safety and health, not by the size of fines.

[Full Article](#)

## Chemical spill sickens workers, leads to partial evacuation at Indy FedEx facility

Five people became sick after a chemical spill at an Indianapolis FedEx facility early Tuesday morning.

The incident happened at the FedEx Freight Facility on Decatur Boulevard when a forklift unloading a pallet spilled a bag of "topcoat resin," a sealant. About two hours after the

spill was cleaned up, workers started feeling sick, with symptoms including nausea and vomiting.

All five employees ended up at St. Francis Mooresville for evaluation. The building was partially

evacuated as a precaution.

The workers are expected to make a full recovery, and FedEx officials said the company followed all protocols. Operations at the facility were back to normal operations except for one dock.

## Some jobs tied to higher risk of rheumatoid arthritis

Workers exposed to airborne toxins may have an elevated risk of developing rheumatoid arthritis, an immune system disorder that causes debilitating swelling and pain in the joints, a Swedish study suggests.

Among men, bricklayers, concrete workers and electricians had at least twice the risk of rheumatoid arthritis they would have in certain other occupations, the study found. For women, jobs in nursing

carried a 30 percent higher risk than other careers.

"Previous studies have indicated that occupations within the manufacturing sector are associated with an increased risk of rheumatoid arthritis," said lead study author Anna Ilar of the Karolinska Institute in Sweden.

"The novelty of our findings is that we showed that occupations within this sector are related to an increased risk of rheumatoid arthritis even

after controlling for lifestyle-related factors including smoking, alcohol use, education and (obesity)," Ilar said by email.

While smoking is a known risk factor for rheumatoid arthritis, the findings add to evidence suggesting that environmental factors could trigger the disease in some people.

[Full Article](#)

## Deadly oil tank battery explosion in Mead caused by combustible products buildup

The oil tank battery explosion in Weld County that killed one person and injured three others in May was caused by a buildup of combustible products that was ignited by workers' equipment, the Mountain View Fire Protection District said Friday.

The [fire and explosion on May 25](#) happened at a oil tank battery near Colorado Highway 66 and Colorado Boulevard in Mead. Anadarko Petroleum owns and operates the site.

Investigators determined the fire and explosion started in a trench that was dug out to remove and replace piping.

Officials said just before the time of the blast, three contract workers were excavating, welding and pipe cutting at the same time.

Officials said the Occupational Safety and Health Administration might issue citations to employers

for any violations of the occupational safety and health regulations it identifies in the coming months.

Fire officials believe there could have been more than one ignition source and they have not pinpointed where the fire started inside the trench.

OSHA and the Colorado Oil and Gas Conservation Commission are investigating the explosion. The agencies have not released their findings on the case.

## Safety Video Library

Walking Working Surfaces

Ariel Lift Safety Training

Back Safety

Arc Flash Accident

Funny Safety Training Video

Safety and Health Rules  
Comedy Bit

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"Safety is not an object nor  
something you can measure! It's  
culture, a value."



Information provided by  
OSHA QuickTakes

## Fall into Safety

### **Get Your Flu Shot**

Autumn is the start of flu season, and it's recommended that everyone 6 months and older gets vaccinated against the flu. Learn more about [flu prevention and the flu vaccine](#).

### **Reduce Fear this Halloween**

Halloween is a fun-filled time for children, but there are many dangers associated with the holiday unrelated to ghouls, goblins and witches. Parents need to take the necessary [Halloween safety precautions](#) to make sure their children remain safe while still having fun. Check out our [infographic on safe costume choices](#) to help keep kids safe on Halloween.

### **Drive safely as it gets Darker**

Daylight Saving Time ends every year on the first Sunday in November. This means it starts to get darker earlier. As we set our clocks backward by one hour in most areas of the country, here are some tips for [driving at night](#).

**Green Cross Tip:** When you change your clocks, it's also a great time to check the batteries in your smoke alarms and carbon monoxide detectors.

## Upcoming Events

Plan to join us in 2017  
for the 68th Annual  
Safety and Health  
Conference - at the  
Capitol Plaza Hotel, in  
Topeka, KS, September  
19 – 22, 2017.

Check out our website:  
<http://www.dol.ks.gov/Safety/events.aspx>

Work Comp date: Sept  
27 – 28. Info at:  
<https://www.dol.ks.gov/WorkComp/seminar.aspx>